

Resolution No.:	<u>18-687</u>
Introduced:	<u>December 6, 2016</u>
Adopted:	<u>December 6, 2016</u>

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND**

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By: District Council

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**SUBJECT:** APPLICATION DPA 17-01, FOR DEVELOPMENT PLAN AMENDMENT of the development plan approved by the Council in LMA G-808 on March 30, 2004, and amended on April 24, 2007, in DPA 06-1 and again on October 19, 2010, in DPA 10-02; Soo Lee-Cho, Esquire, Attorney for the Applicant, Duball BW LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account No. 07-03379068.

**OPINION**

The application for Development Plan Amendment (DPA) No. 17-01 was filed on July 28, 2016, by Duball BW LLC, the successor in interest to Battery Lane LLC and Laurence Lipnick. The Applicant seeks to once again amend the development plan previously approved by the Council on March 30, 2004, in Local Map Amendment (LMA) G-808, and amended on April 24, 2007, in DPA 06-1 and again on October 19, 2010, in DPA 10-02. This matter must be decided under the 2004 Zoning Ordinance (*i.e.*, the one in effect on October 29, 2014) because it is grandfathered under the terms of Section 59.7.7.1.B.1. of the current Zoning Ordinance.

The current address of the property in question is 8032 Woodmont Avenue, in Bethesda, and it is described as Lot 62, Block 2 of the Northwest Park Subdivision, under Tax Account No. 07-03379068. It is recorded as Plat #24439 and contains 22,618 square feet. Exhibit 30, p. 5. The previous address of the site, 4811 Battery Lane, was formally changed (Exhibit 27(a)). The property is located at the northwest corner of the intersection of Woodmont Avenue and Battery Lane in Downtown Bethesda, and is being developed with an 8-story multi-family building with 46 dwelling units, including 9 Moderately Priced Dwelling Units (MPDUs). Exhibit 30, p. 2.

The current Development Plan Amendment (Exhibit 29(a)) seeks only to eliminate Binding Element #10 from the previously approved DPA 06-1. Binding Element #10 provides:

The street commercial space in the planned building will be occupied by a 'Quality Restaurant' as described in the Institute of Transportation Engineers (ITE) Trip

Generation Manual, 7<sup>th</sup> Edition, page 1703, not by any more intensive commercial use (i.e., one producing more peak hour traffic).

The Technical Staff of the Maryland-National Capital Park and Planning Commission (hereinafter, "Technical Staff" or "Staff") describes the subject property as follows (Exhibit 30, p. 2):

... It is rectangular in shape with approximately 340 feet of frontage on Woodmont Avenue and approximately 60 feet of frontage on Battery Lane. The Subject Property is zoned PD-75 and the gross tract area is 22,618 square feet. The front portion of the Property is under construction and will be developed with an 8-story multi-family building with 46 dwelling units, including 9 Moderately Priced Dwelling Units (MPDUs). The rear portion of the Property contains a one-family detached dwelling unit developed as a conditional use formerly known as a Special Exception Use, (S-2740) for a charitable or philanthropic institution which was approved by the Board of Appeals (BOA) on March 27, 2009. The conditional use is known as the Children's Inn at NIH and is operational. There are no rare, threatened or endangered species, streams, specimen or champion trees on the site. In all previous zoning and site plan approvals, this Project was referred to as Woodmont View but is now known as Stonehall.

The Applicant is seeking removal of Binding Element 10 so that it can replace the specified restaurant use with another retail/service establishment use that will be more compatible, but will generate the same amount of vehicular traffic as the approved restaurant use. Exhibit 5. This Binding Element was provided by the Applicant in DPA 06-1 to ensure that the vehicular trips associated with the overall development did not exceed capacity limits of nearby intersections. The former owner and applicant in DPA 06-1 had indicated, late in the DPA 06-1 hearing before the Hearing Examiner, a desire to have flexibility in using the proposed commercial space for something other than a restaurant. The Hearing Examiner did not find it objectionable to allow the applicant such flexibility under certain parameters; however, because both the Technical Staff and Planning Board had evaluated the applicant's proposal with the understanding that a restaurant was projected for the commercial space, the Hearing Examiner found that it would not be appropriate to allow such flexibility without giving those bodies an opportunity to evaluate the benefits and any potential detriments of non-restaurant commercial uses at the site. Exhibit 5, pp. 2-3 and Exhibit 19, p. 19, note 14.

Both Technical Staff and the Montgomery County Planning Board recommended approval of DPA 17-01 and that the Amendment be placed on the first available District Council agenda without the necessity of a public hearing by the Hearing Examiner. Exhibits 30 and 31. Technical Staff reports that "There are no environmental issues or impacts associated with the subject DPA." Staff also found that DPA 17-01 "is in general conformance with both the 1994 Bethesda CBD Sector Plan and the 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan," and that transportation facilities would not be adversely affected. Exhibit 30, p. 8. Technical Staff further concluded that "the subject DPA continues to achieve the purposes under Section 59-C-7.11 of the Zoning Ordinance, and to be compatible with the other uses existing or proposed adjacent to or in the vicinity of the area." Exhibit 30, p. 15. Technical Staff notes in its report that

if the subject DPA 17-01 is approved by the Council, the Applicant will need to amend the previously approved Site Plan to reflect the proposed change in use. Exhibit 30, p. 2.

The Planning Board found that DPA 17-01:

- continues to be consistent with the recommendations of the 1994 Bethesda CBD Sector Plan, and the 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan;
- satisfies the purpose clause of the PD-75 Zone; and
- continues to be compatible with the adjacent development. [Exhibit 31, p. 2.]

There has been no opposition to DPA 17-01, and no request has been made for an OZAH hearing. Therefore, under the provisions of 2004 Zoning Ordinance §59-D-1.74(c)(3), “the office of zoning and administrative hearings [OZAH] must forward the Planning Board’s report and recommendation directly to the Council,” without a hearing by OZAH. In these kinds of cases, a draft resolution is prepared by OZAH based solely on the record prepared by Technical Staff and the Planning Board’s transmittal letter.

Technical Staff forwarded a transcript of the proceeding before the Planning Board (Exhibit 32) and a statement that there were no notices or other external communications in this case (Exhibit 33). The record is now complete, and the matter can be considered directly by the District Council without the need for a hearing or recommendation by the Hearing Examiner.

Based on the record developed by the Technical Staff and the Planning Board, the District Council makes the following findings, as required by 2004 Zoning Ordinance §59-D-1.61:

- a. The proposed DPA is consistent with both the *Bethesda CBD Sector Plan* and the *Woodmont Triangle Amendment to the Bethesda CBD Sector Plan*. The *Bethesda CBD Sector Plan* recommended the PD-75 Zone for this Property. The Sector Plan also recommended creating new housing in this area, including affordable housing. The Woodmont Triangle amendment also supported street-activating first floor uses in this area. Under DPA 10-02, the County Council approved a height increase from 79.4 feet to 90 feet for this Project to include 19% MPDUs or 9 units on-site. The proposed Development Plan Amendment continues to be in substantial compliance with the use and density requirements as well as the land use recommendations of both Sector Plans. No workforce housing is proposed under the subject DPA.
- b. This DPA Application continues to be consistent with the purposes, standards and regulations of the PD 75 Zone as found in previous approvals for this Project. The Project will continue to provide for the maximum safety, convenience and amenities for future residents and will be compatible with adjacent development in this area.
- c. The external vehicular access points along both roadways are safe, adequate and efficient for movement and circulation patterns. Sidewalks along Woodmont Avenue and Battery Lane provide safe, adequate and efficient access for pedestrians to move from the site to the surrounding area.

- d. The site is exempt from the forest conservation requirements under Chapter 22A due to its size. The appropriate approvals for stormwater management were made under the previous site plan approvals for this Project.
- e. As included under the previous approvals, the Homeowner's Association (HOA) documents will establish a mechanism for perpetual maintenance of the common areas.


Based on the foregoing analysis and after a thorough review of the entire record, the District Council concludes that the proposed Development Plan Amendment will meet the standards set forth in the applicable 2004 Zoning Ordinance, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012).

### ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, approves the following resolution.

DPA 17-01, which requests an amendment to the Development Plan previously approved by the District Council on March 30, 2004, in Local Map Amendment (LMA) G-808, and amended on April 24, 2007, in DPA 06-1 and again on October 19, 2010, in DPA 10-02, is hereby approved, thereby removing Binding Element No. 10 from the Development Plan, subject to the specifications and requirements of the Development Plan Amendment, Exhibit 29(a), provided that the Applicant submits to the Hearing Examiner for certification, a reproducible original and three copies of the Development Plan Amendment approved by the District Council, within 10 days of approval, in accordance with §59-D-1.64 of the 2004 Zoning Ordinance.

This is a correct copy of Council action.

  
Linda M. Lauer, Clerk of the Council